IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 3117 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

NAGINBHAI SHANKARBHAI PATEL AND ANOTHER
Versus
STATE OF GUJARAT AND ANOTHER

==========

Appearance :
NOTICE SERVED for Applicants.
MS MANISHA SHAH, APP for Respondent No. 1.
MR EE SAIYED for Respondent No. 2.

==========

CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 23/02/2006

ORAL JUDGMENT

By filing this application, the applicants, who are original accused No.1 and 2 of Criminal Case No.092/1992 pending before learned Judicial Magistrate, First Class, Savli have prayed for quashing of the said

proceedings.

The advocate initially engaged by the applicants having been elevated to the Bench of this Court, applicants were served with fresh notice but they have not filed any appearance.

The complaint in question is filed by respondent No.2 herein under Sections 405, 406 and 420 read with Section 114 of the Indian Penal Code on the ground that on assurance given by the accused, the complainant parted with tobacco and in turn, he was cheated in the matter of payment as the amount is not paid though promised. It is alleged in paragraph 6 of the complaint that on the basis of assurance given by the accused, large quantity of tobacco was given to the accused on credit by the complainant and that goods were transported in a truck. In paragraph 7 of the complaint, it is stated that at the instance of the accused, the complainant had also gone to Madhya Pradesh for taking the money. There also an assurance was given on behalf of the accused that they will give the money within due course. On this and other averments aforesaid complaint is filed.

Thereafter, learned Magistrate passed an order under Section 156 (3) of the Criminal Procedure Code. Since the matter is sent for police investigation and considering the fact that the matter is pending since 1993, learned APP, Ms.Shah has rightly submitted that the matter is now required to be disposed of as ultimately if it is found that the applicants have not committed any offence, police will file appropriate summary report and if prima facie role of the applicants is established, police may file charge sheet.

Considering the fact that defence of the applicants cannot be considered at this stage when police investigation is ordered, in my view, this is not a case for delaying the investigation any further as more than 13 years have already passed. Therefore, this application is rejected with a liberty to the applicants to take appropriate proceedings in accordance with law after the investigation is over. Rule is discharged. Interim relief granted earlier stands vacated.

(P.B.MAJMUDAR, J.)

/malek